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ADDRESS BY

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LAW BEYOND BORDERS: AGENDA FOR JUSTICE

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Thank you for that kind introduction.

Merci et bonjour à tous les participants à cette conférence. I am delighted to be here today.

Let me say from the outset that I am aware of your keen interest in the pending announcement on the process for appointing judges to the Supreme Court of Canada and on the appointments themselves. As I mentioned yesterday, that announcement will be coming soon. I can say that the proposed process will contribute to democratic reform through greater transparency and parliamentary involvement in appointments to the Supreme Court.

What I want to talk to you about today are some of the important, broad, compelling and enduring challenges we face in pursuing justice in "Law Beyond Borders" in our globalized world.

I want to focus on the common cause that brings us together: the struggle against injustice, against inequality, against hate, against atrocity - and this as part of the larger struggle for human rights and human dignity in our time, and where this struggle is - in the most profound existential sense of the word - the struggle for ourselves. Because in what we say - or more importantly in what we do - we make a statement about ourselves as a people.

And I believe I have a responsibility as Minister of Justice to challenge, if not inspire you, to advance the cause of justice and better the human condition.

After I was sworn in last December, I shared with reporters my life's credo - that which I learned from my father, my first law teacher, and which remains my credo now as Justice Minister: that I will be guided by one overarching principle - the pursuit of justice - and within that, the promotion and protection of equality. Equality not just as a section in the Charter, but as an organizing principle for the building of a just society; and the promotion and protection of human dignity as the core of a society that is both just and humane.

Shortly afterwards, I went about the country visiting with my counterpart Attorneys-General, law schools, the Bar, regional offices of the Department of Justice, and justice stakeholders in an effort to seek their counsel as to what the justice agenda should be.

During the course of these discussions I began to appreciate another of my father's teachings - that the pursuit of justice requires having a sense of injustice - that you have to feel the injustice in order to advance the cause of justice.

This teaching came home to me in my first encounter with Inuit law students from Akitsiraq law school in Nunavut, the first ever Inuit law school. What they said was very compelling in terms of having a sense of injustice as part of the pursuit of justice.

They said, "Professor Cotler, we are not just law students - we are Aboriginal law students. We come with a past, with a history, with a heritage - and we have been dislocated from that history and heritage. We have been dispossessed from our language and our land, our culture and our identity - indeed even our legal tradition. And so when we go to court it's not that we want to engage in litigation - but we are trying to affirm who we are - to recapture our identity, to reaffirm our history and our heritage, our language and our legal traditions. We speak out of a deep sense of pain."

I shared with them a Talmudic parable which you can find replicated in other religious and cultural traditions as well. It is where a group of students comes to their Rabbi and says, "Rabbi, we love you," and the Rabbi says, "Do you know what hurts me?" And the students say, "Why do you ask if we know what hurts you if we say we love you?" And the Rabbi replies, "Because if you don't know what hurts me, you can't really say you love me."

And so we have to approach the justice agenda by trying to feel the sense of pain of those who are the victims of discrimination and disadvantage. We have to have a feeling for injustice if we want to effectively pursue justice.

If I can sum up my vision - and my challenge for us today - it would be: a call to action to all of us who have been blessed with education and training, who have chosen law as our vocation, to be at the forefront of the struggle for the public good.

Let me share with you, then, some of the challenges and related organizing principles for the justice agenda. As you will see, as per my father's dictum, they are all anchored in the injustices of our day.

1. The first is **The Relationship Between Security and Rights - Between Counterterrorism & Human Rights**

The underlying principle here is that there is no contradiction between the protection of security and the protection of human rights. In a word, anti-terrorism law and policy itself is anchored in a twofold human rights perspective: first, transnational terrorism - the slaughter of innocents - constitutes an assault on the security of a democracy and the most fundamental rights of its inhabitants - the right to life, liberty and security of the person.

Accordingly, anti-terrorist law and policy should be seen as the promotion and protection of the security of a democracy and fundamental human rights in the face of this injustice - the protection, indeed, of human security in the most profound sense.

At the same time, the enforcement and application of counterterrorism law and policy must always comport with the rule of law. Minorities must never be singled out for differential and discriminatory treatment; torture must always and everywhere be prohibited; and counterterrorism must not undermine the very human security we seek to promote and protect.

It is important that we bear these bedrock principles in mind over the next few months as we undertake a number of important initiatives in the area of national security, like the Parliamentary review this fall of Bill-36, the *Anti-terrorism Act*. I have no doubt your organization will be a leading voice in this review, much as you were in the debates leading up to the passage of this

vital legislation.

2. A second challenge is the **Protection of the Most Vulnerable**

The test of a just society, a society organized around the principles of equality and human dignity, is how it treats the most vulnerable of its members - children, women, the elderly, the sick, refugees, minorities, Aboriginals. Each and every one of these groups must find a place in the justice agenda. We must aspire to a society in which no one is left behind, in which equality is not only an ideal but a constitutional norm, in which we extend a hand to those disadvantaged and discriminated against, in which we build bridges rather than erect walls in our multicultural mosaic.

A) Children's Rights

One of the most profound human rights lessons I was taught came from my daughter - now 24 - who, at the age of 15, challenged me with this profound statement: "Daddy, if you want to know what the real test of human rights is all about, always ask yourself at any time, in any situation, in any part of the world - is it good for children, is what is happening good for children. Daddy, that's what justice is all about."

And that is why, in my view, the rights of the child — protecting children against all forms of exploitation, neglect and mistreatment — must be a priority.

B) Women's rights

My credo is that women's rights are human rights, and human rights are meaningless unless they include women's rights. I am not just indulging in idle rhetoric here. This must be a priority for our agenda, a matter of principle and policy.

According to UNICEF, discrimination against women is a greater injustice than apartheid was in South Africa . And, as Charlotte Bunch, a leader of the international feminist movement, said, vast numbers of people around the world suffer from starvation and terrorism, are humiliated, tortured, mutilated and even murdered every year, just because they are women.

This is why I have made women's rights a priority. One of our first initiatives was to deal with trafficking of women, the new international slave trade, the crime industry that is growing fastest of all. Every year, hundreds of thousands of people, mostly women and children, are kidnapped in their own countries by gangs of criminals and forced into prostitution or into labour at minimal pay in underground sweatshops in other countries, including Canada .

Accordingly, we established a policy to **prevent** people trafficking, **protect** victims and **pursue** the perpetrators, both in Canada and abroad. I call it our **Three Ps** policy. In addition, my department co-chaired the first Canadian world conference on the subject.

C) Aboriginal Justice

Canada must also continue to address the appalling inequity faced by so many Aboriginal people who are overrepresented as offenders and victims in the criminal justice system and underrepresented as police officers, judges and lawyers.

We must do more to facilitate the entry of Aboriginal candidates into law schools, police academies and other training centres. We must ensure that Aboriginal traditions and approaches, like sentencing circles and restorative justice, are represented in, and recognized by, the mainstream justice system. In short, we cannot permit this rapidly growing segment of our population to be relegated to the margins of Canadian society.

3. A third challenge - and related principle - must be the **Combating of Racism and Hate**

We have witnessed in recent months a growing, if not unprecedented, incidence and intensity of hate crimes in Canada. Synagogues and mosques have been vandalized, cemeteries have been desecrated, persons and property attacked. We also witnessed two particularly virulent hate crimes - the firebombing of a Jewish day school in Montreal and the torching of a Mosque in Pickering, Ontario.

Shortly after those incidents, I visited with representatives of eight faith groups in Toronto where a Mosque and a synagogue are adjacent and share a common driveway. And I spoke then of the need for a common front against hate, for the mobilization of a constituency of conscience, of a solidarity with the victim - where Jews speak up when Muslims are attacked, and Muslims speak up when Jews are attacked, and both speak up together when any of our vulnerable minorities is targeted.

And so, what is needed now, and Canada can play a leading role in this domestically and internationally, is a culture of respect in place of a culture of contempt; a culture of human rights in place of a culture of hate; a culture of accountability in place of a culture of impunity. This would include: the unequivocal condemnation of such acts of hate by our political leadership, for we have learned of the dangers of indifference and inaction; the development of inter-religious and intercultural dialogue as a component of our shared citizenship; and the education of our children in anti-racism, human rights, multiculturalism and the lessons of the Holocaust and other genocides.

We must also continue to develop and apply a comprehensive legal regime - both domestic and international - to combat hate with a panoply of remedies.

For one of the enduring lessons of the Nazi Holocaust- and of the genocides in the Balkans and Rwanda - is that these mass state killings were made possible not only because of the machinery of death and the technology of terror - but because of a state-sanctioned culture and ideology of hate, because of the teaching of contempt and the demonizing of the other. This is where it all begins.

As the Supreme Court of Canada put it, in upholding the constitutionality of our anti-hate legislation: the Holocaust did not begin in the gas chambers. It began with words. These, as the Court put it, are the chilling facts of history. These are the catastrophic effects of racism, the breeding ground of genocide.

4. The Struggle Against Impunity and the Combating of Mass Atrocity

If the 20th century was the age of atrocity, it was also the age of impunity as few of the perpetrators of state-sanctioned mass killings were brought to justice. It took the globalized horror of the killing fields of the 90's, the horror of Bosnia, the agony of Rwanda, the brutalized women and children of Sierra Leone and Sudan, to give the idea of an International Criminal Court the moral compellability and sense of urgency it warranted. The establishment of this Court was the most important development in international criminal law since Nuremberg. It is a wake up call and a warning to tyrants everywhere. There will be no safe havens, no sanctuary for the enemies of humankind.

Canada played a lead role in the establishment of the International Criminal Court itself -and a Canadian, Philippe Kirsch, is its first president. It is now incumbent upon Canada, which enacted our own *War Crimes and Crimes Against Humanity Act* in implementation of the ICC Treaty, to make the bringing of war criminals to justice, both domestically and internationally, the linchpin of building an international criminal justice system in the 21st Century.

But the struggle against impunity requires that we not only punish international atrocities after the

fact - that we bring war criminals to justice - but that we seek to prevent atrocities to begin with. Indeed it is as trite as it is profound that the best protection of mass atrocity is the prevention of the killing fields to begin with.

Studies have shown that the development of national justice systems in transitional, failing, or failed states - together with the promotion of human rights institutions and democratic processes - are the best antidote against atrocity, and the most effective investment we can make in human security.

But if prevention is unavailing, and we are on the verge of killing fields and a humanitarian catastrophe, then the international community has a responsibility to protect. Indeed, even in our day we have witnessed an appalling indifference to the unthinkable - ethnic cleansing - and the unspeakable - genocide, and worst of all a preventable genocide in Rwanda. No one can say that we did not know. And so it is our responsibility to break down the walls of indifference, to shatter the conspiracies of silence wherever they may be. As Nobel Peace laureate Elie Wiesel put it, "neutrality always means coming down on the side of the victimizer - never on the side of the victim."

Conclusion

These then are some of the compelling challenges faced by our country, by the community of nations and by all engaged in the pursuit of justice. And each of these challenges, as I have attempted to point out, requires us to think and act from both a global and a domestic perspective.

But there is also a more personal dimension - a moral responsibility - a call to action that speaks to all of us who have made the law our vocation - and that is a personal commitment to achieving justice.

As CBA members, you understand this and demonstrate your commitment to the cause of justice in many ways.

Like many of you, I believe that the legal profession is a calling - it will never be just a business. It is more than a vocation. It is a public trust. We have an obligation to give back to our communities. This is a way for us to make a difference. As lawyers, whether in private practice, corporate counsel, government or academia, I believe that we each have a responsibility to strive to achieve justice.

The CBA has shown leadership and I commend you for it. But our challenge - individually and collectively - is to be at the forefront for the struggle of the public good. So today I invite the CBA, the Federation of Law Societies, the Chambre des Notaires, the Canadian Council of Law Deans, law students, the Canadian Corporate Counsel Association, and indeed my provincial attorney general colleagues, to join with me and the Department of Justice to create a critical mass of advocacy on behalf of the public good, to meet together to discuss ways we can deepen our commitment to pro bono practice and to the cause of justice.

Indeed, our goal, simply put, should be to create an inspired pro bono culture, a pro bono movement in this country. None of this is intended to suggest that pro bono is a substitute for a well functioning legal aid system, and it does not detract from the priority for legal aid reform, to which I am committed.

Each one of us can play an indispensable role in the struggle for justice. Each one of us can make a difference. Each one of us has the capacity to do something everyday on the part of some victim of discrimination and disadvantage somewhere. Some of you may ask: What difference can I make? What difference can one person make?

For the answer, I remind you of the legacy of two of our honourary citizens - Raoul Wallenberg and Nelson Mandela. Raoul Wallenberg was the Swedish diplomat who saved more Jews in the Second World War than any single government and showed that indeed one person can make a difference, that it is possible to confront evil, to resist, to overcome and to transform history. While Nelson Mandela, 28 years in a South African prison, emerged to preside over the dismantling of Apartheid and become President of a democratic South Africa.

The tragedies that have come to define our time can be stopped and prevented.

As we can appreciate, there can be no peace without justice, no freedom without human rights, no sustainable development without the rule of law.

We need not only dream of a just and humane society, we as lawyers can help build it. And that would be the best expression of the public trust bestowed upon us.

Thank you.

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